Counter Arguments

- The Corporate Understatement Penalty, enacted by AB 1452 (2008), applies only to understatements of over $1 million on original returns. The accuracy related penalty applies only to understatements that lack reasonable basis on original returns. No penalty exists for refund claims that lack reasonable basis (except for frivolous positions), so the "whipsaw effect" is only ensuring that large taxpayers don't have a risk-free gamble to take the most aggressive refund position possible. The penalty simply eliminates the incentive in current law to ask for the biggest refund possible regardless of the merits of the tax issues, and ensures that the penalties that apply to original returns aren't rendered meaningless upon a refund claim.

- Penalties can be onerous, but they always result in revenue far beyond estimates, so noncompliance must be consistently more prevalent than expected. The voluntary compliance initiative, the amnesty program, and the corporate understatement penalty all changed taxpayer behavior in ways we did not expect.

- Taxpayers may appeal the penalty to a hearing officer at FTB, then again to the BOE (R&T Code §19322).

- Reasonable Basis is not defined in statute, but is defined in federal regulations (26 C.F.R. §1.6662-3(b)(3)), which California conforms to (R&T Code §17024.5 (d) and 23051.5)

- All taxpayers have been subject to this penalty for federal purposes since 2007. Failing to conform for state purposes leaves the barn door open in California that the Bush administration closed for federal purposes. The level of opposition to this bill given the penalty at the federal level suggests that taxpayers are filing bogus refund claims for California-only tax benefits, something we cannot afford in the current dire fiscal situation.